



AF ✓  
W

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner:	Tri M. Mai
Serial No.:	10/606,627	)	Art Unit:	3727
Filed:	06/25/2003	)	Attorneys Ref.:	P214379
Title:	Holding Apparatus and Method for Dispensers of Hardenable Materials	)		

**RESPONSE TO NOTICE OF  
NON-COMPLIANT APPEAL BRIEF (37 CFR 41.37)**

Technology Center (TC)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

07/03/2007 WASHAW1 00000006 10606627

01 FC:2251

60.00 00

Sir:

This is in response to the Notice of Non-Compliant Appeal Brief (37 CFR 41.37) mailed April 30, 2007. A one-month Extension of Time is hereby requested making the response deadline June 30, 2007. Because June 30<sup>th</sup> fell on a Saturday, this response is being timely filed on July 2, 2007. Enclosed is a check in the amount of \$60 for the one-month small entity extension fee. It is believed that no further fee or charge is due at this time to maintain the application in full force and effect. However, if any such fee or charge is due, please charge this to Deposit Account No. 502099.

**REMARKS**

This is in response to the Notice of Non-Compliant Appeal Brief (37 CFR 41.37) dated April 30, 2007. In that Notice, the Examiner stated that the Appeal Brief filed on March 5, 2007, is defective for failure to comply with one or more provisions of 37 CFR 41.37.

The Patent Appeal Center Specialist advised that arguments were not presented under separate headings for each ground of rejection on appeal in Section VII. Further, the Specialist stated that the brief did not contain copies of the decisions rendered by a court or the Board in the Related Proceedings Appendix.

The Applicant submits herewith a corrected Appeal Brief in which the arguments presented in the original Appeal Brief have been organized using headings that correspond to the identified grounds of rejection on appeal in Section VII. In addition, the corrected Appeal Brief submitted herewith confirms in Section X that no related proceedings exist.

If there is any matter which could be expedited by consultation with the Applicant's attorney, such would be welcome. The Applicant's attorney can normally be reached at the telephone number below.

Signed at Bellingham, County of Whatcom, State of Washington this 2<sup>nd</sup> day of July 2007.

Respectfully submitted,

Kelly Good

By Michael R. Schacht

Michael R. Schacht, Reg. No. 33,550  
2801 Meridian Street, Suite 202  
Bellingham, WA 98225-2400  
phone: (360) 647-0400  
fax: (360) 647-0412  
Customer No. 30662

CERTIFICATE OF MAILING

37 C.F.R. §1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to Technology Center (TC), Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Signature: \_\_\_\_\_

Susie Hubka

Print Name:

Susie Hubka

Date:

July 2, 2007



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner:	Tri M. Mai
		)		
Serial No.:	10/606,627	)	Art Unit:	3727
		)		
Filed:	06/25/2003	)	Attorneys Ref.:	P214379
		)		
Title:	Holding Apparatus and Method for	)		
	Dispensers of Hardenable Materials	)		

**APPEAL BRIEF**

**(Filed 07-11-2006 – Corrected 03-05-2007 – Corrected 07-02-2007)**

Technology Center (TC)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

An Appeal Brief was due in the above referenced application on June 11, 2006. The Applicant requested and paid the fee for a one-month Extension of Time to file the Appeal Brief. The Office granted the extension of time, making the Appeal Brief due July 11, 2006. The Appeal Brief was timely mailed on July 11, 2006. The undersigned attorney included check No. 12706 in the amount of \$250 for the small entity Appeal fee under 37 CFR 41.20(b)(2).

In a telephone conversation with Examiner Mai on January 10, 2007, the undersigned attorney was advised that Examiner Mai did not receive the Appeal Brief that the undersigned attorney mailed on July 11, 2006. The undersigned attorney resubmitted the Appeal Brief, along with a photocopy of the return-receipt postcard bearing the Mail Room's date stamp of July 17, 2006, and canceled check bearing the date of receipt of 07-17-2006.

In a subsequent telephone conversation with Examiner Mai on February 16, 2007, the undersigned attorney was advised that the resubmitted Appeal Brief, which was received in the Patent Office on January 16, 2007, would not scan properly because of the color images. The undersigned attorney resubmitted the Appeal Brief with the images

printed in black and white on March 5, 2007 (Certificate of Mailing dated February 27, 2007).

This Corrected Appeal Brief is in response to the Notification of Non-Compliant Appeal Brief mailed April 30, 2007. A response was due May 30, 2007. A one-month Extension of Time is hereby requested making the response deadline June 30, 2007. Because June 30<sup>th</sup> fell on a Saturday, this response is being timely filed on July 2, 2007. Enclosed is a check in the amount of \$60 for the one-month small entity extension fee.

It is believed that no additional fee is due at this time to maintain the application in full force and effect. However, if any such fee or charge is due, please charge this fee to Deposit Account No. 502099.

## **REMARKS**

### **I. Real Party in Interest**

The Appellant (Applicant) is Kelly Good, an individual residing at 209 Judy Avenue, Burlington, WA 98233-2825.

### **II. Related Appeals and Interferences**

NONE

### **III. Status of Claims**

Claims 1-21 stand rejected. Claims 1-21 are being appealed. Claims 22-24 are pending in the present application but were not specifically addressed by the December 13, 2005, Office Action. An Office Action mailed March 18, 2005, in connection with the present application indicated that claims 22-24 contained allowable subject matter but objected to these claims as being dependent upon a rejected based claim. The Appellant believes that claims 22-24 are allowable as presented, but claims 22-24 are not part of the present appeal.

#### IV. Status of Amendments

The application has not been amended subsequent to final rejection.

#### V. Summary of Claimed Subject Matter

Claims 1, 11, and 17 of the present application are independent. A concise explanation of each of these independent claims will be set forth below. Additionally, the Appellant intends to argue the patentability of dependent claims 2, 3, 4, 6, and 12 separately and thus also provides below a concise explanation of these claims.

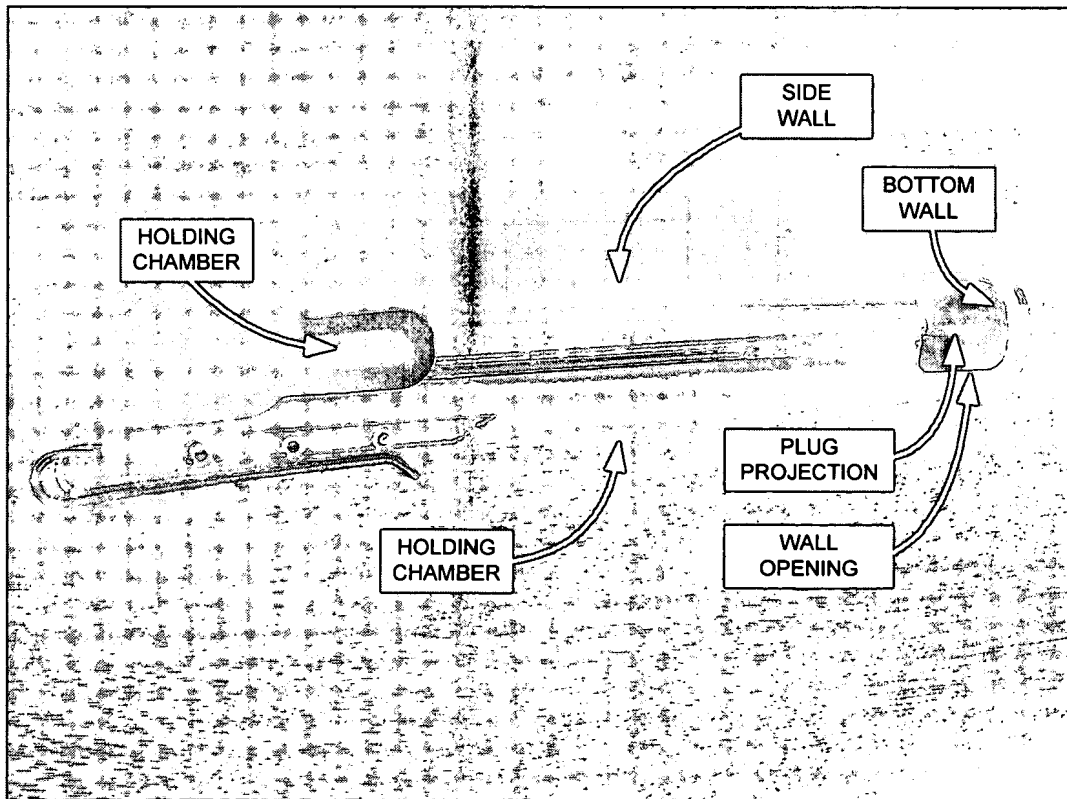
##### A. INDEPENDENT CLAIM 1

Claim 1 is directed to a holding system for a dispensing system for hardenable materials. The holding system comprises a holding structure defining a bottom wall and a holding chamber and a plug projection extending from the bottom wall into the holding chamber. The following Table A cross-references the elements of claim 1 with reference characters and drawing figures depicting examples of these elements and example page and line numbers at which each element is discussed:

TABLE A

Claim Element	Ref. Char.	Fig. Nos.	Page, Line Nos.
holding structure	40	2-11	page 8, lines 28 – 30
bottom wall	44	2-8	page 8, lines 28 – 30
holding chamber	46	2,3,5,6	page 8, line 30 – page 9, line 1
plug projection	50	2-8	page 8, lines 1-2

An example holding system constructed in accordance with the invention as recited in claim 1 is depicted in Photograph 1 below. As indicated, Photograph 1 represents the holding structure, bottom wall, holding chamber, and plug projection of that product:



Photograph 1: Product overview depicting holding structure and plug projection

#### B. INDEPENDENT CLAIM 11

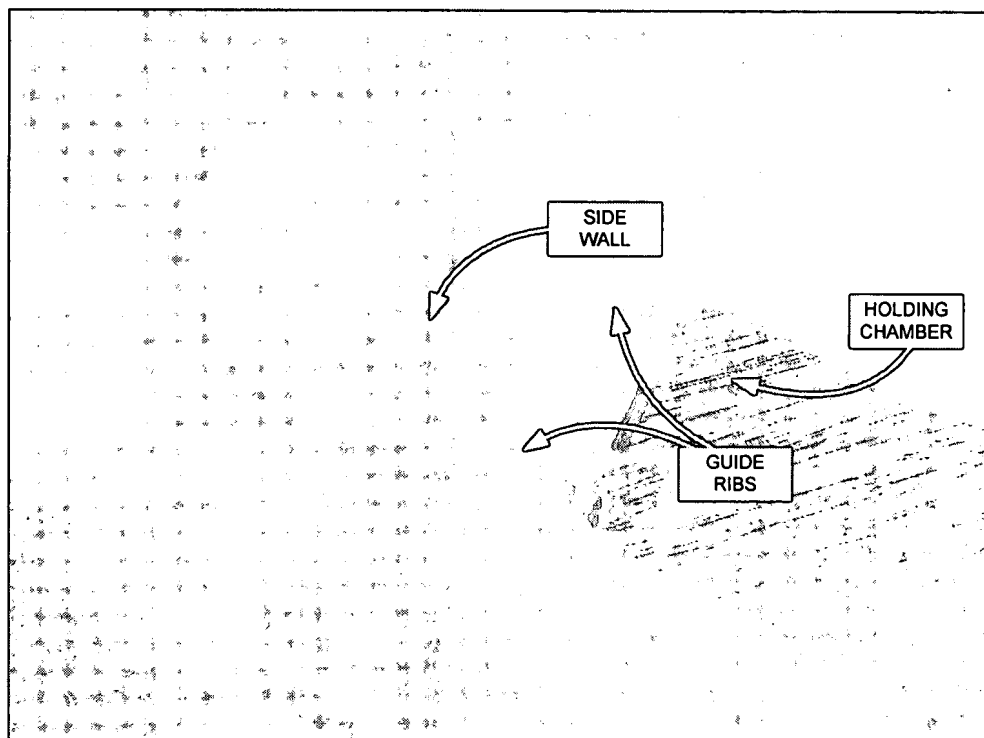
Claim 11 is directed to a method of holding a dispensing system for hardenable materials. The method comprises the steps of: providing a holding structure comprising a side wall and a bottom wall and defining a holding chamber; forming a plug projection on the bottom wall, where the plug projection extends into the holding chamber; forming at least one guide rib on the side wall of the holding structure, where the guide rib extends into the holding chamber; and displacing a product cartridge into the holding chamber such that the guide rib engages the dispensing system to facilitate entry of the plug projection into a dispensing opening of the dispensing system. The following Table B cross-

references the elements of claim 11 with reference characters and drawing figures depicting these elements and page and line numbers at which each element is discussed:

TABLE B

Claim Element	Ref. Char.	Fig. Nos.	Page, Line Nos.
holding structure	40	2-11	<i>page 8, lines 28-30</i>
side wall	42	2-8	<i>page 8, lines 28-30</i>
bottom wall	44	2-8	<i>page 8, lines 28-30</i>
holding chamber	46	2,3,5,6	<i>page 8, line 30 – page 9, line 1</i>
plug projection	50	2-8	<i>page 8, lines 1-2</i>
<i>guide rib</i>	<i>52</i>	<i>2,3,5,9-10</i>	<i>page 10, lines 18-22</i>

Photograph 1 above depicts an example product embodying the holding structure, side wall, bottom wall, holding chamber, and plug projection. Photograph 2 reproduced below depicts an example product embodying a guide rib extending from the side wall into the holding chamber:



Photograph 2: Detail of guide ribs

### C. INDEPENDENT CLAIM 17

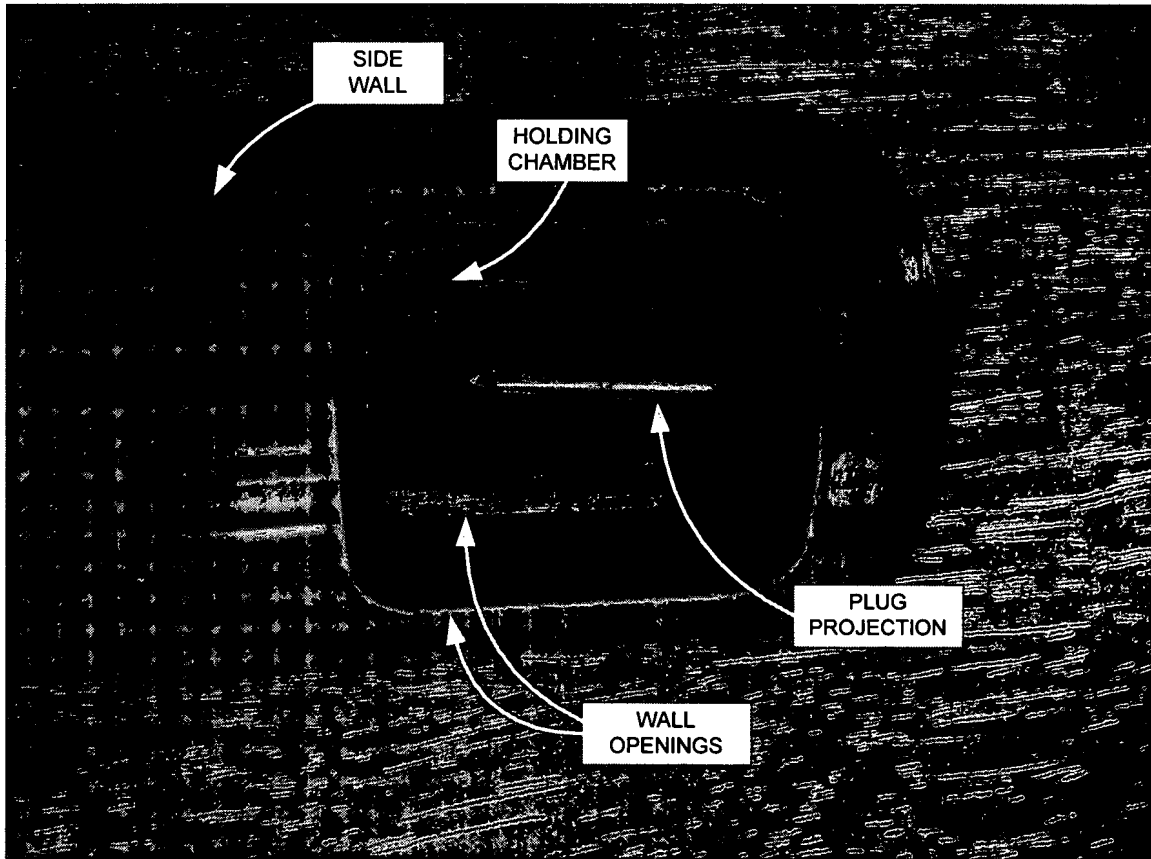
Claim 17 is directed to a holding system for a dispensing system for hardenable materials. The holding system comprises a holding structure comprising a side wall and a bottom wall and defines a main opening, a holding chamber, and at least one wall opening. A plug projection extends from the bottom wall into the holding chamber. At least one guide rib extends from the side wall into the holding chamber. The holding chamber is sized and dimensioned to receive the product cartridge. When the product cartridge is placed into the holding chamber, the guide rib and the wall opening are arranged to facilitate entry of the plug projection into the dispensing opening. The following Table C cross-references the elements of claim 17 with reference characters and drawing figures depicting these elements and page and line numbers at which each element is discussed:

TABLE C

Claim Element	Ref. Char.	Fig. Nos.	Page, Line Nos.
holding structure	40	2-11	<i>page 8, lines 28-30</i>
side wall	42	2-8	<i>page 8, lines 28-30</i>
bottom wall	44	2-8	<i>page 8, lines 28-30</i>
holding chamber	46	2,3,5,6	<i>page 8, line 30 – page 9, line 1</i>
plug projection	50	2-8	<i>page 8, lines 1-2</i>
guide rib	52	2,3,5,9-10	<i>page 10, lines 18-22</i>
<i>wall opening</i>	<i>54</i>	<i>4-6,8</i>	<i>page 10, lines 23-30</i>

Photographs 1 and 2 above depict an example product embodying the holding structure, side wall, bottom wall, holding chamber, plug projection, and guide rib. Photograph 3 reproduced below depicts details of an example product embodying the wall opening in the side wall and a plug projection extending from the bottom wall:





Photograph 3: Detail of wall opening and plug projection

D. DEPENDENT CLAIM 2

Claim 2 depends from claim 1 and further recites a wall opening an example of which is depicted in Photographs 1 and 3 above.

E. DEPENDENT CLAIM 3

Claim 3 depends from claim 1 and further recites a plurality of guide ribs examples of which are depicted in Photograph 2 above.

F. DEPENDENT CLAIM 4

Claim 4 depends from claim 1 and further recites that the guide ribs are sized, dimensioned, and located to allow the dispensing system to be displaced into the holding chamber such that the plug projection may enter a dispensing opening defined by the dispensing system.

G. DEPENDENT CLAIM 6

Claim 6 depends from claim 1 and further recites at least one guide rib an example of which is depicted in Photograph 2 above.

H. DEPENDENT CLAIM 12

Claim 12 depends from claim 11 and further recites the step of forming a wall opening in the side wall; an example of such a wall opening is depicted in Photographs 1 and 3 above.

VI. Grounds of Rejection to be Reviewed on Appeal

This section summarizes the grounds of rejection set forth in the final Office Action mailed December 13, 2005.

Initially, claims 1-21 were provisionally rejected under 35 USC § 101 as claiming the same invention as that of claims 1-21 of the Appellant's Application Serial No. 10/367,088. The '088 application is now abandoned, rendering moot the provisional rejections based thereon.

Claims 1, 5, and 7-9 stand rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland and 5,295,601 to Bostelman.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of the Cleveland and Bostelman references and further in view of U.S. Patent No. 5,302,302 to Shelley.

Claims 9-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of the Cleveland and Bostelman references and further in view of U.S. Patent No. 5,620,163 to Wu.

Claims 3, 4, 6, 11, 13-15, and 17-21 stand rejected under 35 USC § 103(a) as being unpatentable over the combination of the Cleveland and Bostelman references and further in view of U.S. Patent No. 4,588,116 to Litman.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of the Cleveland, Bostelman, and Litman references and further in view of U.S. Patent No. 5,302,320 to Shelley (presumably U.S. Patent No. 5,302,302 to Shelley).

Claims 15-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Cleveland, Bostelman, and Litman references and further in view of U.S. Patent No. 4,588,116 to Wu (presumably U.S. Patent No. 5,620,163 to Wu).

## VII. Argument

### A. Provisional Rejection of Claims 1-21 Under 35 U.S.C. § 101

Initially, pending claims 1-21 were provisionally rejected under 35 USC § 101 as claiming the same invention as that recited in claims 1-21 of the Appellant's Application Serial No. 10/367,088. The '088 application is now abandoned. The Appellant respectfully submits that the abandonment of the '088 application renders moot the provisional rejections based thereon.

### B. Rejection of Claims 1, 5, and 7-9 Under 35 USC § 103(a)

Claims 1, 5, and 7-9 stand rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland and 5,295,601 to Bostelman. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland and Bostelman references, (b) he has not identified in the prior

art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claim 1.

Claim 1 recites a holding system comprising a holding structure and a plug projection. The holding structure comprises a side wall and a bottom wall and defines a main opening and a holding chamber. The plug projection extends from the bottom wall of the holding structure into holding chamber. The holding chamber is sized and dimensioned to receive a product cartridge of a dispensing system. Claims 5 and 7-9 depend from, and further define, the subject matter of claim 1.

The Cleveland reference discloses a caulking gun holder comprising a body (20) having an elongated nose (24) and a cap (26) detachably attached to the elongate nose. The applicator tip of a caulking gun is inserted into the elongated nose such that the cap "stops" drips of caulking material from the tip (col. 4, lines 39-40). The cap is removed to allow the caulking material to be removed and cleaned to prevent buildup of dried caulking material in the elongated nose or cap (col. 4, lines 41-43). The Cleveland device thus is not designed to seal the opening in the tip of the caulking gun. The Cleveland reference instead provides structure that catches any drips of caulking material from the opening and which may be cleaned to remove build-up of any caulking material that would otherwise accumulate within the chamber defined by the elongated nose and cap.

The Bostelman device is a refinement of the common practice of sealing the end of a caulking tool with a nail as described in the background section of the present application. The Bostelman reference discloses a caulk cartridge cap (10) that comprises an orifice retention rod (18) which extends from a plug member (12). A threaded metal insert (30) is secured within a cavity (28) defined by the plug member. The orifice retention rod is inserted into the opening in an applicator tube (22) of a caulking gun until the threaded insert engages the tube. The threads facilitate attachment of the caulk cartridge cap onto the tube. The Bostelman caulk cartridge cap is thus intended to seal the tube of the caulk cartridge but in no way facilitates the holding or carrying of a caulk cartridge.

The Appellant respectfully submits that the fact that Examiner has not established the required motivation for one of ordinary skill in the art to combine the Cleveland and Bostelman references. The Manual of Patent Examining Procedure defines a *prima facie* case of obviousness as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. MPEP 2143, Eighth Edition Incorporating Revision No. 4.

The Appellant respectfully submits that the Examiner has failed to identify in the prior art either a teaching or suggestion to make the claimed combination or of a reasonable expectation of success. In support of the combination of Cleveland and Bostelman, the Examiner has stated the following:

[B]oth Cleveland and Bostelman are both directed to sealant caulking apparatus. It would have been obvious to one of ordinary skill in the art to provide a cap with a plug projection in Cleveland as taught by Bostelman to provide a more effective seal.

The Appellant respectfully submits that this reasoning is simply a conclusory argument based on faulty premise that, simply because two references belong to the same general technological area, the combination of those references is obvious. The Examiner has failed to identify anything in the Cleveland or Bostelman references, or any third reference, that would provide motivation to one of ordinary skill in the art to make the cited combination or that such a combination would be successful.

The Appellant further respectfully submits that the combination of the Cleveland and Bostelman references does not teach or suggest all of the claim limitations. In particular, claim 1 specifies that the plug projection extends from the bottom wall of the holding structure into the holding chamber. Neither the Cleveland reference nor the Bostelman reference discloses, teaches, or suggests a plug projection extending from the bottom wall of a holding structure. The Appellant respectfully submits that the cited combination does not disclose, teach, or suggest the limitations of claim 1.

The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a).

Further, the Appellant respectfully submits that the Cleveland and Bostelman references teach away from the cited combination. Cleveland solves the problem of leaking caulking guns by catching the leaking caulk, not by sealing the end of the caulking gun. In this respect, the use of a seal would obviate the need for a significant feature of the Cleveland patent: the ability to remove and clean the cap. The Appellant respectfully submits that one of ordinary skill in the art would read the Cleveland reference as teaching away from the use of a seal.

The Bostelman patent addresses the problem of caulk material leaking from a caulking gun by sealing the tip of the caulking gun in a generally conventional manner. The primary improvement of the Bostelman patent over the concept of inserting a nail into the dispensing opening of a dispensing cartridge is to provide a threaded insert that threadingly engages the dispensing tip around the dispensing opening to hold the projection in the dispensing opening and to improve the seal. However, a threaded insert requires rotation of the entire cap and projection. If the threaded cap and projection of the Bostelman reference was somehow grafted onto the cap of the Cleveland device, the functionality of the threads would be destroyed because the entire holster could not be rotated for the threads to engage the tip.

Given the foregoing, the Appellant thus respectfully requests withdrawal of the rejection of claims 1, 5, and 7-9 based on the combination of Cleveland and Bostelman.

C. Rejection of Claim 2 Under 35 USC § 103(a)

Claim 2 stands rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, and U.S. Patent No. 5,302,302 to Shelley et al. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland, Bostelman, and Shelley et al. references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claim 2.

Claim 2 contains all of the elements of claim 1 but further recites a wall opening formed in the support structure adjacent to the plug projection. As described, the wall opening facilitates access to the plug projection within the holding chamber.

The Shelley et al. device describes a holster for cylindrical articles (such as an aerosol container) in which a slot is formed at the lower end of the holster to allow the article to be pushed out of the holster from below. The Shelley et al. reference fails to recognize or attempt to solve the problem of leaking product dispenser. The cylindrical articles being contained by the Shelley et al. device are not subject to leaks and in fact are stored with the dispensing opening upright.

Initially, the Appellant respectfully reasserts that the base combination of the Cleveland and Bostelman references is improper as suggested above and submits that any combination based on this base combination is also improper. The Shelley et al. reference does not remedy any defects in the base combination, and the arguments set forth above with respect to claim 1 further apply to claim 2.

The Appellant further respectfully submits that the Examiner has not established the required motivation for one of ordinary skill in the art to combine the Shelley et al. reference with either of the Cleveland and Bostelman references. In particular, the Appellant respectfully submits that the Examiner has failed to identify in the prior art either a teaching or suggestion to make the claimed combination or of a reasonable expectation of success.

The reasoning supplied by the Examiner for combining the Cleveland and Bostelman references is even less persuasive when applied to the Shelley et al. reference because the Shelley et al. reference is not directed to a sealant caulking apparatus.

The Appellant respectfully submits that the Examiner has used impermissible hindsight gained by reading the Appellant's disclosure to pick and choose features from prior art references without regard to the claimed invention as a whole. In addition, the Appellant respectfully submits that the Examiner has failed to identify any particular teaching in these references that would provide motivation to one of ordinary skill in the art to combine the Shelley reference with the Cleveland and Bostelman references.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a).

In addition, the wall opening recited in claim 2 is particularly placed to allow access to the plug projection. The user may thus facilitate entry of the plug projection into a dispensing opening of the dispensing assembly by reaching through the wall opening. The device recited in claim 2 thus allows the seal to be formed quickly and easily, which is very important given that a dispenser may be withdrawing from the holding structure, used, and replaced tens if not hundreds of times during a typical workday.

The Appellant respectfully requests withdrawal of the rejection to claim 2 based on the combination of Cleveland, Bostelman, and Shelley et al. references is respectfully requested.

D. Rejection of Claims 9-10 under 35 USC § 103(a)

Claims 9-10 stand rejected under 35 USC § 103(a) based on the combination of the Cleveland and Bostelman references and further in view of U.S. Patent No. 5,620,163 to Wu. In particular, the Examiner cited the Wu reference as providing a support assembly as recited in claim 9 and the support rack as recited in claim 10.

However, the Appellant respectfully submits that the Wu reference fails to remedy the defects in the cited base combination of Cleveland and Bostelman as described in Section VII(b) above. The Appellant respectfully submits that, because the base combination is improper and in any event fails to disclose, teach, or suggest the present invention as recited in claim 1, the further addition of the Wu reference to that combination also fails to disclose, teach, or suggest the present invention as recited in claim 1. Because claims 9 and 10 further define claim 1, the Appellant further respectfully submits that the combination of Cleveland, Bostelman, and Wu further fails to disclose, teach, or suggest claims 9 and 10.

E. Rejection of Claims 3, 4, 6, 11, 13-15, and 17-21 Under 35 USC § 103(a)

Claims 3, 4, 6, 11, 13-15, and 17-21 stand rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, and U.S. Patent No. 4,588,116 to Litman. The Appellant respectfully submits that the



Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland, Bostelman, and Litman references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claims 3, 4, or 6.

In particular, the Appellant will first briefly describe the claims at issue and will then argue that the Examiner has failed to establish a prima facie case of obviousness because the combination of Cleveland, Bostelman, and Litman is improper. The Appellant will then address the distinguishing features of the claims, individually and/or in groups of related claims.

#### 1. Brief Discussion of Claims at Issue

Claim 3 contains all of the elements of claim 1 but further recites a plurality of guide ribs, where at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into a dispensing opening of the dispensing assembly. Claim 4 depends from claim 3 and further specifies that the guide ribs are sized, dimensioned, and located to allow the plug projection to enter the dispensing opening of the dispensing assembly. Claim 6 contains the limitations of claim 1 and further specifies that at least one guide rib engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

#### 2. Brief Discussion of the Litman Reference

The Litman device describes a holster for a chemical tear gas dispenser adapted to be worn on the belt. Ribs are formed within the holster to facilitate "both a snug fit and ease of withdrawal of [the dispenser] from the holster."

### 3. Examiner has not Established a Prima Facie Case of Obviousness

Initially, the Appellant respectfully reasserts that the base combination of the Cleveland and Bostelman references is improper as suggested above and submits that any combination based on this base combination is also improper. The Litman reference does not remedy any defects in the base combination, and the arguments set forth above with respect to claim 1 further apply to claims 3, 4, and 6.

The Appellant further respectfully submits that the Examiner has not established the required motivation for one of ordinary skill in the art to combine the Litman reference with either of the Cleveland and Bostelman references. In particular, the Appellant respectfully submits that the Examiner has failed to identify in the prior art either a teaching or suggestion to make the claimed combination or of a reasonable expectation of success.

The reasoning supplied by the Examiner for combining the Cleveland and Bostelman references is again unpersuasive when applied to the Litman reference because the Litman reference is not directed to a container for a sealant caulking apparatus.

The Appellant respectfully submits that the Examiner has again used impermissible hindsight gained by reading the Appellant's disclosure to pick and choose features from prior art references without regard to the claimed invention as a whole. In addition, the Appellant respectfully submits that the Examiner has failed to identify any particular teaching in these references that would provide motivation to one of ordinary skill in the art to combine the Litman reference with the Cleveland and Bostelman references.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejections of claims 3, 4, and 6 based on the combination of Cleveland, Bostelman, and Litman reference is respectfully requested.

4. Cited Combination does not Disclose, Teach, or Suggest All the Limitations of Claims 3, 4, and 6

Further, the Appellant respectfully submits that the ribs of the Litman reference do not disclose, teach, or suggest the limitation of claims 3, 4, and 6 whereby the guide ribs facilitate entry of the plug projection into the dispensing opening. As described above, the ribs of the Litman device are for snugging of the carried item within the holster and for easy withdrawal. The Litman patent in no way discloses, teaches, or suggests arranging ribs to guide the carried item such that a plug projection may enter a dispensing opening.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejections of claims 3, 4, and 6 based on the combination of Cleveland, Bostelman, and Litman reference is respectfully requested.

5. Cited Combination does not Disclose, Teach, or Suggest All the Limitations of Claims 11 and 13-15

Claim 11 stands rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, and U.S. Patent No. 4,588,116 to Litman. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland, Bostelman, and Litman references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claim 11.

Claim 11 is a method claim comprising the steps of providing a holding structure, forming a plug projection on a bottom wall of the holding structure, forming at least one guide rib on a side wall of the holding structure, and displacing a product cartridge such that the guide rib engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening of the product cartridge.

As described above, the Litman device describes a holster for a chemical tear gas dispenser adapted to be worn on the belt. Ribs are formed within the holster to facilitate “both a snug fit and ease of withdrawal of [the dispenser] from the holster.”

Initially, the Appellant respectfully reasserts that the base combination of the Cleveland and Bostelman references is improper as suggested above and submits that any combination based on this base combination is also improper. The Litman reference does not remedy any defects in the base combination, and the arguments set forth above with respect to claim 1 further apply to claim 11. The Appellant again respectfully submits that the Examiner has not established the required motivation for one of ordinary skill in the art to combine the Litman reference with either of the Cleveland and Bostelman references as described above with reference to claims 3, 4, and 6.

Further, the Appellant respectfully submits that the ribs of the Litman reference do not disclose, teach, or suggest the limitation of claim 11 whereby guide ribs facilitate entry of a plug projection into a dispensing opening of a product cartridge. As described above, the ribs of the Litman device are for snugging of the carried item within the holster and for easy withdrawal. The Litman patent in no way discloses, teaches, or suggests arranging ribs to guide the carried item such that a plug projection may enter a dispensing opening.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejection of claim 11 based on the combination of Cleveland, Bostelman, and Litman reference is respectfully requested. The Appellant further respectfully requests withdrawal of the rejections of claims 13-15, which depend from and further define claim 11, based on the combination of Cleveland, Bostelman, and Litman.

6. Cited Combination does not Disclose, Teach, or Suggest All the Limitations of Claims 17-21

Claim 17 stands rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, and U.S. Patent No. 4,588,116 to Litman. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior

art a suggestion or motivation to combine the Cleveland, Bostelman, and Litman references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claim 17.

Claim 17 recites a holding system comprising a holding structure, a plug projection, and at least one guide rib. The holding structure comprises a side wall and a bottom wall and defines a main opening and a holding chamber. The holding chamber is sized and dimensioned to receive a product cartridge of a dispensing system. The plug projection extends from the bottom wall of the holding structure into holding chamber. The guide ribs extend from the side wall of the holding structure into the holding chamber. When the product cartridge is placed into the holding chamber, the guide rib and the wall opening are arranged to facilitate entry of the plug projection into the dispensing opening.

Initially, the Appellant respectfully reasserts that the base combination of the Cleveland and Bostelman references is improper as suggested above and submits that any combination based on this base combination is also improper. The Litman reference does not remedy any defects in the base combination, and the arguments set forth above with respect to claim 1 further apply to claim 17. The Appellant again respectfully submits that the Examiner has not established the required motivation for one of ordinary skill in the art to combine the Litman reference with either of the Cleveland and Bostelman references as described above.

Further, the Appellant respectfully submits that the ribs of the Litman reference do not disclose, teach, or suggest the limitations of claim 17 whereby guide ribs facilitate entry of a plug projection into a dispensing opening of a product cartridge. As described above, the ribs of the Litman device are for snugging of the carried item within the holster and to facilitate easy withdrawal of the carried item. The Litman patent in no way discloses, teaches, or suggests arranging ribs to guide the carried item such that a plug projection may enter a dispensing opening.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejection of claim 17 based on the combination of Cleveland, Bostelman, and Litman reference is respectfully requested. The Appellant further respectfully requests withdrawal

of the rejections of claims 18-21, which depend from and further define claim 17, based on the combination of Cleveland, Bostelman, and Litman.

F. Rejection of Claim 12 under 35 USC § 103(a)

Claim 12 stands rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, and U.S. Patent No. 5,302,302 to Shelley. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland, Bostelman, and Shelley references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claim 12.

Claim 12 contains the limitations of claim 11 but further includes at least one wall opening in the holding structure adjacent to the plug projection. The Shelley reference discloses an opening in a cylindrical holster to allow the user to push on the bottom of an aerosol dispenser to facilitate removal of the dispenser from the holster.

Initially, the Appellant respectfully reasserts that the base combination of the Cleveland and Bostelman references is improper as suggested above and submits that any combination based on this base combination is also improper. The Shelley reference does not remedy any defects in the base combination, and the arguments set forth above with respect to claim 1 further apply to claim 12. The Appellant again respectfully submits that the Examiner has not established the required motivation for one of ordinary skill in the art to combine the Shelley reference with either of the Cleveland and Bostelman references as described above.

Further, the Appellant respectfully submits that the ribs of the Shelley reference do not disclose, teach, or suggest the limitations of claim 17 whereby the opening is located to facilitate entry of a plug projection into a dispensing opening of a product cartridge. In contrast, the opening of the Shelley device is for removing the carried item from the holster. The Appellant respectfully submits that the Shelley patent in no way discloses, teaches, or suggests arranging an opening to facilitate entry of a plug projection into a dispensing opening.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejection of claim 12 based on the combination of Cleveland, Bostelman, and Shelley references is respectfully requested.

G. Rejection of Claims 15-16 under 35 USC § 103(a)

Claims 15-16 stand rejected under 35 U.S.C. § 103(a) based on the combination of U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, U.S. Patent No. 4,588,116 to Litman, and U.S. Patent No. 5,620,163 to Wu. The Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness because: (a) he has not identified in the prior art a suggestion or motivation to combine the Cleveland, Bostelman, Litman, and/or Wu references, (b) he has not identified in the prior art a reasonable expectation of success, and (c) the cited combination does not teach or suggest all the limitations of claims 15-16.

Claims 15-16 contains the limitations of claim 11 but further include a support assembly (claim 15) or support rack (claim 16). The Examiner cited the Wu reference as providing a support assembly as recited in claim 15 and the support rack as recited in claim 16. However, the Appellant respectfully submits that the Wu reference fails to remedy the defects in the cited base combination of Cleveland, Bostelman, and/or Litman as described above. The Appellant respectfully submits that, because the base combination is improper and in any event fails to disclose, teach, or suggest the present invention as recited in claim 11, the further addition of the teachings of the Wu reference to that combination also fails to disclose, teach, or suggest the present invention as recited in claim 11.

Given the foregoing, the Appellant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under 35 USC § 103(a), and withdrawal of the rejection of claims 15-16 based on the combination of Cleveland, Bostelman, Litman, and Wu references is respectfully requested.

#### H. Inadequate Consideration Given to Submitted Declarations

In response to the Office Action Mailed March 18, 2005, in connection with the present application, the Appellant submitted a number of Declarations in support of the Appellant's arguments in support of patentability. In particular, the Appellant submitted the following declarations in support of the present application: Declaration of Kelly Good; Declaration of Brian Boche; Declaration of Steve Cupps; and Declaration of Wayne Biehle. Copies of these Declarations are submitted in the Evidence Appendix below.

The Examiner characterized these Declarations as "mainly [asserting] that the combination of Cleveland and Bostelman, taken along (sic) or in combination, disclose, teach, or suggest the product as described in paragraph 5." The Appellant presumes that the Examiner meant to say that it was the position of the Declarants that the combination of Cleveland and Bostelman does not disclose, teach, or suggest the invention.

In any event, the Appellant respectfully submits that the Examiner mischaracterized these Declarations. The Examiner concluded by stating that "[t]hese declarations fail to ascertain what exactly are missing from the combination of Cleveland and Bostelman." These Declarations clearly stated that it was the opinion of the various Declarants that one of ordinary skill in the art would not be motivated to combine the Cleveland and Bostelman as suggested by the Examiner.

The previously submitted declarations are thus not primarily directed to the cited combination *per se* but instead are directed to the issue of whether the cited combination is proper. The declarations are thus consistent with, and provide evidentiary support of, the arguments set forth above concluding that the Examiner has failed to establish a *prima facie* case of obviousness under 35 USC § 103(a).



## VIII. Claims Appendix

The claims involved in this Appeal are as follows:

1. A holding system for a dispensing system for hardenable materials, the dispensing system comprising a dispensing gun and a product cartridge having a dispensing tip defining a dispensing opening, the holding system comprising:  
a holding structure comprising a side wall and a bottom wall, where the structure defines a main opening and a holding chamber;  
a plug projection extending from the bottom wall into the holding chamber; whereby the holding chamber is sized and dimensioned to receive the product cartridge.
2. A holding system as recited in claim 1, in which at least one wall opening is formed in the holding structure adjacent to the plug projection.
3. A holding system as recited in claim 1, in which a plurality of guide ribs extend from the side wall into the holding chamber, where, when the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.
4. A holding system as recited in claim 3, in which the guide ribs define a central portion of the holding chamber and at least one perimeter portion of the holding chamber, where the guide ribs and at least one perimeter portion are sized, dimensioned, and located to allow the dispensing system to be displaced into the holding chamber such that the plug projection may enter the dispensing opening.
5. A holding system as recited in claim 1, further comprising a belt clip secured to the holding structure, where the belt clip allows the holding structure to be suspended from a belt worn by an operator.

6. A holding system as recited in claim 1, further comprising at least one guide rib extending from the side wall into the holding chamber, whereby, when the product cartridge is placed into the holding chamber, the guide rib is arranged to engage a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

7. A holding system as recited in claim 1, in which the holding structure comprises a barrel portion and a cap portion, where:  
the barrel portion defines a portion of the side wall;  
the cap portion defines a portion of the side wall and the bottom wall; and  
the cap portion is detachably attached to the barrel portion to facilitate access to the plug projection.

8. A holding system as recited in claim 1, in which the holding structure comprises a container portion and a projection member, where:  
the container portion defines the side wall and the bottom wall; and  
the projection member is detachably attached to the container portion such that the projection member defines the plug projection.

9. A holding system as recited in claim 1, further comprising a support assembly attached to the holding structure, where the support assembly supports the holding structure in a desired orientation relative to a support surface.

10. A holding system as recited in claim 1, further comprising a support rack, where the support rack engages the holding structure to support the holding structure in a desired orientation relative to a support surface.

11. A method of holding a dispensing system for hardenable materials, the dispensing system comprising a dispensing gun and a product cartridge having a dispensing tip defining a dispensing opening, the method comprising the steps of:

providing a holding structure comprising a side wall and a bottom wall, where the holding structure defines a main opening and a holding chamber and the holding chamber is sized and dimensioned to receive the product cartridge; forming a plug projection on the bottom wall of the holding structure, where the plug projection extends into the holding chamber; and forming at least one guide rib on the side wall of the holding structure, where the at least one guide rib extends into the holding chamber; displacing the product cartridge into the holding chamber such that the guide rib engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

12. A method as recited in claim 11, further comprising the steps of forming at least one wall opening in the holding structure adjacent to the plug projection.

13. A method as recited in claim 11, in which the step of providing the holding structure comprises the steps of:  
providing a barrel portion and a cap portion; and detachably attaching the cap portion to the barrel portion such that the barrel portion defines a portion of the side wall and the cap portion defines a portion of the side wall and the bottom wall.

14. A method as recited in claim 11, in which the step of providing the holding structure comprises the steps of:  
providing a container portion and a projection member; and detachably attaching the projection member to the container portion such that the projection member defines the plug projection.

15. A method as recited in claim 11, further comprising the steps of:  
attaching a support assembly to the holding structure; and  
arranging the support assembly in a retracted configuration; and

arranging the support assembly in an extended configuration in which the support assembly supports the holding structure in a desired orientation relative to a support surface.

16. A method as recited in claim 11, further comprising the steps of:  
providing a support rack; and  
arranging the holding structure on the support rack such that the support rack supports the holding structure in a desired orientation relative to a support surface.

17. A holding system for a dispensing system for hardenable materials, the dispensing system comprising a dispensing gun and a product cartridge having a dispensing tip defining a dispensing opening, the holding system comprising:  
a holding structure comprising a side wall and a bottom wall, where the holding structure defines a main opening, a holding chamber, and at least one wall opening;  
a plug projection extending from the bottom wall into the holding chamber; and  
at least one guide rib extending from the side wall into the holding chamber;  
whereby  
the holding chamber is sized and dimensioned to receive the product cartridge; and  
when the product cartridge is placed into the holding chamber, the guide rib and the wall opening are arranged to facilitate entry of the plug projection into the dispensing opening.

18. A holding system as recited in claim 17, in which a plurality of guide ribs extend from the side wall into the holding chamber, where, when the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

19. A holding system as recited in claim 18, in which the guide ribs define a central portion of the holding chamber and at least one perimeter portion of the holding

chamber, where the guide ribs and at least one perimeter portion are sized, dimensioned, and located to allow the dispensing system to be displaced into the holding chamber such that the plug projection may enter the dispensing opening.

20. A holding system as recited in claim 17, in which the holding structure comprises a barrel portion and a cap portion, where:  
the barrel portion defines a portion of the side wall;  
the cap portion defines a portion of the side wall and the bottom wall; and  
the cap portion is detachably attached to the barrel portion to facilitate access to the plug projection.

21. A holding system as recited in claim 17, in which the holding structure comprises a container portion and a projection member, where:  
the container portion defines the side wall and the bottom wall; and  
the projection member is detachably attached to the container portion such that the projection member defines the plug projection.

22. A holding system as recited in claim 1, further comprising a support system comprising:  
a support projection formed on the holding structure;  
first, second, and third brace projections extending from the holding structure; and  
a support member; wherein  
the support member engages the support projection to place the support system in a hanging configuration; and  
the support member engages the brace projections to place the support system in a free-standing configuration.

23. A method as recited in claim 12, further comprising the steps of:  
forming a support projection on the holding structure;  
forming first, second, and third brace projections on the holding structure;

securing a support member to the support projection to place the support system in a hanging configuration; and  
securing the support member to the brace projections to place the support system in a free-standing configuration.

24. A holding system as recited in claim 17, further comprising a support system comprising:

a support projection formed on the holding structure;  
first, second, and third brace projections extending from the holding structure; and  
a support member; wherein  
the support member engages the support projection to place the support system in a hanging configuration; and  
the support member engages the brace projections to place the support system in a free-standing configuration.

## IX. Evidence Appendix

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner: Newhouse, Nathan
		)	Jeffrey
Serial No.:	10/606,627	)	
		)	Art Unit: 3727
Filed:	06/25/2003	)	
		)	Attorneys Ref.: P214379
Title:	HOLDING APPARATUS AND METHOD	)	
	FOR DISPENSERS OF HARDENABLE	)	
	MATERIALS	)	

DECLARATION OF KELLY GOOD

I, Kelly Good, having a home address of 209 Judy Avenue, Burlington, Washington 98233, state and aver the following:

1. I have been asked by Mr. Michael R. Schacht, the attorney of record in this U.S. Patent Application Serial No. 10/606,627, to comment on certain matters of which I have knowledge. I hereby declare that all statements herein made of my own knowledge are true and that all statements herein made on information and belief are believed to be true.
2. I am currently owner of Fiddler Roofing Company. I have been in the roofing for approximately 25 years. I consider myself of at least ordinary skill in the roofing trade.
3. I have had a chance to look at U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, 5,302,302 to Shelley et al., and 4,588,116 to Litman.
4. Approximately 2 1/2 years ago, I began selling a product under the trademark Caulked N' Ready. I developed the Caulked N' Ready product as a result of my experience in the roofing industry. In particular, I recognized that the caulking gun industry had not provided an effective way of storing and/or preserving caulking material in caulking tubes after the tubes had been opened. I was aware of a number of jobsite "solutions" to the problem of storing and preserving caulking material, but these were typically inconvenient and ineffective. For example, the use of a nail to plug an opened caulking tube required the user to search for and find an appropriate nail and even then did not adequately seal the opening in the caulking tube.



5. Further, nails and other such plugs did not solve the problem of carrying a caulking tube and gun combination while working. When working on ladders, rough framing, and roofs, it is often helpful to have both hands free. I was unaware of anything that would effectively seal the opening in a caulking tube and at the same time allow the tube and gun to be carried with both hands free without losing the seal and dripping caulking material.

6. My Caulked N' Ready product not only solved the problem of storing and preserving caulking materials in open caulking tubes but also allowed the caulking tube and gun to be carried while on the jobsite while allowing both hands to be free.

7. Although my Caulked N' Ready product was originally developed and is currently marketed primarily for use with caulking materials, the Caulked N' Ready product can be used with any number of hardenable materials, such as adhesives, stuccos, and the like, that are stored in a tube and dispensed with gun assemblies.

8. The Caulked N' Ready product is a holder configured to hold dispensing guns for product cartridges containing materials such as adhesives and caulking materials. The Caulked N' Ready product comprises a holding structure defining a side wall and a bottom wall. The structure defines a main opening and a holding chamber, and a plug projection extends from the bottom wall into the holding chamber. The holding chamber is sized and dimensioned to receive the product cartridge.

9. I do not think that the Cleveland and Bostelman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 8 above. In particular, the Bostelman device is intended to engage the tip of the product cartridge directly and not to be attached to a holster such as the holster shown in the Cleveland patent. The Caulked N' Ready product is in contrast a multi-purpose device that is designed for hands-free storing and plugging of the opening in the product cartridge. In my opinion, one of ordinary skill in the art would not be motivated to combine Cleveland and Bostelman to obtain the Caulked N' Ready product as described in paragraph 8.

10. The Caulked N' Ready product further has at least one wall opening formed in the holding structure adjacent to the plug projection.

11. I further do not think that the Cleveland, Bostelman, and Shelley patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 10 above. Again, I do not believe that one of ordinary skill in the art would modify either the Cleveland or the Shelley holster to incorporate the Bostelman device. Further, the blind slot 18 in the Shelley holster is provided only to allow the aerosol container stored therein to be lifted and not to provide access to a plug projection. In contrast, the opening in the Caulked N' Ready product as described in paragraph 10 is for not for pushing anything or lifting, but instead allows the plug projection to be cleaned. In my opinion, the Shelley patent does not suggest modifying the Cleveland holder to include an opening as recited in paragraph 10 above.

12. The Caulked N' Ready product further has a plurality of guide ribs that extend from the side wall into the holding chamber. When the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

13. I further do not think that the Cleveland, Bostelman, and Litman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 12 above. The Litman patent discloses ribs 30, but describes these ribs 30 as being flexible to facilitate a snug fit and ease of withdrawal of the item stored in the holster 10. The ribs described in the Litman patent are not guides, and certainly do not disclose, teach, or suggest a structure that would facilitate entry of the plug projection into the dispensing opening. In my opinion as one of ordinary skill in the art, the ribs described in Litman do not disclose, teach, or suggest the guide ribs as described in paragraph 12 above.

14. In summary, I do not believe that one of ordinary skill in the art would combine the Cleveland, Bostelman, Shelley, and Litman references as suggested by the Examiner.

15. I am attaching herewith as Exhibits A and B a letter and product review written by the Gillian Zed of The Product Rocket following the 2005 National Hardware Show/Gourmet Housewares Show in Las Vegas, NV. The Product Rocket is a company that identifies innovative products and assists developers in bringing these products to market. The letter and

product review attached hereto indicate that the Caulked N' Ready product is unique and one of the handiest inventions seen at the show.

16. We are currently negotiating with a caulking gun manufacturer to take this product to Lowe's, and in my opinion neither the caulking gun manufacturer nor Lowe's would negotiate with us unless they believed that the product was novel and nonobvious.

17. I, Kelly Good, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 18<sup>th</sup> day of August, 2005.

A handwritten signature in cursive script, appearing to read "Kelly Good", is written over a horizontal line.

Kelly Good

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner: Newhouse, Nathan
		)	Jeffrey
Serial No.:	10/606,627	)	Art Unit: 3727
Filed:	06/25/2003	)	Attorneys Ref.: P214379
Title:	HOLDING APPARATUS AND METHOD	)	
	FOR DISPENSERS OF HARDENABLE	)	
	MATERIALS	)	

DECLARATION OF STEVE CUPPS

I, Steve Cupps, having a home address of 7337 Miller Road, Anacortes, Washington 98221, state and aver the following:

1. I have been asked by Mr. Kelly Good, the Applicant named in this U.S. Patent Application Serial No. 10/032,780, to comment on certain matters of which I have knowledge. I hereby declare that all statements herein made of my own knowledge are true and that all statements herein made on information and belief are believed to be true.
2. I am currently roofer with Fiddler Roofing. I have been in the roofing industry for approximately 20 years. I consider myself of at least ordinary skill in the roofing trade. I have no financial interest in the invention claimed in the '780 application.
3. I have had a chance to look at U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, 5,302,302 to Shelley et al., and 4,588,116 to Litman.
4. For approximately 1 year, I have used a product sold under the trademark Caulked N' Ready. Before I started and using the Caulked N' Ready caulking gun holder, using a caulking gun would always end up in a sticky mess with caulk all over me and anything within 50 yards. I could use part of a tube and try to save the rest (i.e., by putting a nail in it and wrapping it in a plastic bag). Without fail, I would go to use it the next time and sure enough, it would be hard as a rock. Off to the store for another \$10.00 tube of caulk. Then I was introduced to the Caulked N' Ready caulking gun holder. No more fuss and no more mess. I hook it on my tool belt or

pants. I caulk something and instead of trying to find a place to hang the gun and having it drop all over, I just put it in the holder, no more dripping and it's hands free. No more dried out tubes thanks to the in the holder – it plugs and seals it so it doesn't dry out. Another great thing is that it keeps the caulk and the gun together and protected. I dropped mine off the roof and normally, that's the end of the caulking gun, but in this case, it stayed together and was still fully functional. I love the Caulked N' Ready caulking gun holder.

5. The Caulked N' Ready product is a holder configured to hold dispensing guns for product cartridges containing materials such as adhesives and caulking materials. The Caulked N' Ready product comprises a holding structure defining a side wall and a bottom wall. The structure defines a main opening and a holding chamber, and a plug projection extends from the bottom wall into the holding chamber. The holding chamber is sized and dimensioned to receive the product cartridge.

6. I do not think that the Cleveland and Bostelman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 5 above. In particular, the Bostelman device is intended to engage the tip of the product cartridge directly and not to be attached to a holster such as the holster shown in the Cleveland patent.

7. The Caulked N' Ready product further has at least one wall opening formed in the holding structure adjacent to the plug projection.

8. I further do not think that the Cleveland, Bostelman, and Shelley patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 7 above. Again, I do not believe that one of ordinary skill in the art would modify either the Cleveland or the Shelley holster to incorporate the Bostelman device. Further, the blind slot 18 in the Shelley holster is provided only to allow the aerosol container stored therein to be lifted and not to provide access to a plug projection.

9. The Caulked N' Ready product further has a plurality of guide ribs that extend from the side wall into the holding chamber. When the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

10. I further do not think that the Cleveland, Bostelman, and Litman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 9 above. The Litman patent discloses ribs 30, but describes these ribs 30 as being flexible to facilitate a snug fit and ease of withdrawal of the item stored in the holster 10. The ribs described in the Litman patent are not guides, and certainly do not disclose, teach, or suggest the a structure that would facilitate entry of the plug projection into the dispensing opening.

11. In summary, I don't see how one of ordinary skill in the art would take parts from various patent disclosures and put them together in a way that would come up with the Caulked N' Ready holder.

12. I, Steve Cupps, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 18<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
Steve Cupps

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner: Newhouse, Nathan
		)	Jeffrey
Serial No.:	10/606,627	)	Art Unit: 3727
Filed:	06/25/2003	)	Attorneys Ref.: P214379
Title:	HOLDING APPARATUS AND METHOD	)	
	FOR DISPENSERS OF HARDENABLE	)	
	MATERIALS	)	

DECLARATION OF WAYNE BIEHLE

I, Wayne Biehle, having a mailing address of P.O. Box 356, Everson, Washington 98247, state and aver the following:

1. I have been asked by Mr. Kelly Good, the Applicant named in this U.S. Patent Application Serial No. 10/606,627, to comment on certain matters of which I have knowledge. I hereby declare that all statements herein made of my own knowledge are true and that all statements herein made on information and belief are believed to be true.
2. I am currently a self-employed carpenter. I have been in the construction industry for approximately 16 years. I consider myself of at least ordinary skill in the roofing trade. In addition, I have no financial relationship with Kelly Good nor any financial interest in the invention claimed in the '780 application.
3. I have had a chance to look at U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, 5,302,302 to Shelley et al., and 4,588,116 to Litman.
4. For approximately 2 years, I have used a product sold under the trademark Caulked N' Ready. The Caulked N' Ready caulking gun holder is one of the handiest tools I have seen and used. I use caulking on a regular basis and can say without a doubt that this holder helps me in more ways than one. It saves me time and money by not having to continually go to the store and re-purchase tubes of caulking because the other tube's tips have dried out or the tip has been cut and no longer provides the bead size of caulk I need. The Caulked N' Ready caulking

gun holder allows me to use both of my hands where normally one would be hanging on to the caulking gun and dripping all over.

5. The Caulked N' Ready product is a holder configured to hold dispensing guns for product cartridges containing materials such as adhesives and caulking materials. The Caulked N' Ready product comprises a holding structure defining a side wall and a bottom wall. The structure defines a main opening and a holding chamber, and a plug projection extends from the bottom wall into the holding chamber. The holding chamber is sized and dimensioned to receive the product cartridge.

6. I do not think that the Cleveland and Bostelman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 5 above. In particular, the Bostelman device is intended to engage the tip of the product cartridge directly and not to be attached to a holster such as the holster shown in the Cleveland patent

7. The Caulked N' Ready product further has at least one wall opening formed in the holding structure adjacent to the plug projection.

8. I further do not think that the Cleveland, Bostelman, and Shelley patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 7 above. Again, I do not believe that one of ordinary skill in the art would modify either the Cleveland or the Shelley holster to incorporate the Bostelman device. Further, the blind slot 18 in the Shelley holster is provided only to allow the aerosol container stored therein to be lifted and not to provide access to a plug projection.

9. The Caulked N' Ready product further has a plurality of guide ribs that extend from the side wall into the holding chamber. When the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing system to facilitate entry of the plug projection into the dispensing opening.

10. I further do not think that the Cleveland, Bostelman, and Litman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 9 above. The Litman patent discloses ribs 30, but



describes these ribs 30 as being flexible to facilitate a snug fit and ease of withdrawal of the item stored in the holster 10. The ribs described in the Litman patent are not guides, and certainly do not disclose, teach, or suggest a structure that would facilitate entry of the plug projection into the dispensing opening.

11. In summary, I have reviewed the patents cited by the Patent Office of different devices and can honestly say that I don't see how you would take different parts from the products shown and put them together to come up with the Caulked N' Ready caulking gun holder. I definitely consider myself one of ordinary skill in the construction trade and do not connect these items.

12. I, Wayne Biehle, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 23 day of August, 2005.

Wayne Biehle

Wayne Biehle



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kelly Good	)	Examiner: Newhouse, Nathan
		)	Jeffrey
Serial No.:	10/606,627	)	Art Unit: 3727
Filed:	06/25/2003	)	Attorneys Ref.: P214379
Title:	HOLDING APPARATUS AND METHOD	)	
	FOR DISPENSERS OF HARDENABLE	)	
	MATERIALS	)	

**DECLARATION OF BRIAN BOCHET**

I, Brian Bochet, having a home address of 1719 Pebble Beach Trail, Bellingham, Washington 98226, state and aver the following:

1. I have been asked by Mr. Kelly Good, the Applicant named in this U.S. Patent Application Serial No. 10/032,780, to comment on certain matters of which I have knowledge. I hereby declare that all statements herein made of my own knowledge are true and that all statements herein made on information and belief are believed to be true.
2. I am currently President with Heritage Homes, Inc. I have been in the building for approximately 15 years. I consider myself of at least ordinary skill in the construction trade. In addition, I have no financial relationship with Kelly Good nor any financial interest in the invention claimed in the '780 application.
3. I have had a chance to look at U.S. Patent Nos. 6,491,191 to Cleveland, 5,295,601 to Bostelman, 5,302,302 to Shelley et al., and 4,588,116 to Litman.
4. For approximately 2 ½ years, I have used a product sold under the trademark Caulked N' Ready. I recall the first time I saw the Caulked N' Ready holder and remember thinking how awesome this product was. I instantly thought of how I would no longer have to search for a nail to plug the tip of my tube of caulking. The caulk always dries and hardens around the nail, you have to cut the tip and then no longer have the amount of caulk coming out of the tube that you

want. Now you can also hang a tube of caulk without worrying about it dripping on anything below. I think everyone from the contractor to the do-it-yourself person will benefit from it.

5. The Caulked N' Ready product is a holder configured to hold dispensing guns for product cartridges containing materials such as adhesives and caulking materials. The Caulked N' Ready product comprises a holding structure defining a side wall and a bottom wall. The structure defines a main opening and a holding chamber, and a plug projection extends from the bottom wall into the holding chamber. The holding chamber is sized and dimensioned to receive the product cartridge. The Caulked N' Ready product thus has the tip or plug projection attached to the storage/work tube or holding structure.

6. I do not think that the Cleveland and Bostelman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 5 above. In particular, the Bostelman device is intended to engage the tip of the product cartridge directly and not to be attached to a holster such as the holster shown in the Cleveland patent. The Bostelman and Cleveland devices are totally different products, and in my opinion one of ordinary skill in the art would not be motivated to combine these products by attaching the plug projection or tip of the Bostelman patent with the holding structure or storage/work tube of the Cleveland patent.

7. The Caulked N' Ready product further has at least one wall opening formed in the holding structure adjacent to the plug projection.

8. I further do not think that the Cleveland, Bostelman, and Shelley patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 7 above. Again, I do not believe that one of ordinary skill in the art would modify either the Cleveland or the Shelley holster to incorporate the Bostelman device. Further, the blind slot 18 in the Shelley holster is provided only to allow the aerosol container stored therein to be lifted and not to provide access to a plug projection.

9. The Caulked N' Ready product further has a plurality of guide ribs that extend from the side wall into the holding chamber. When the product cartridge is placed into the holding chamber, at least one of the guide ribs engages a portion of the dispensing

system to facilitate entry and withdrawal of the plug projection into the dispensing opening.

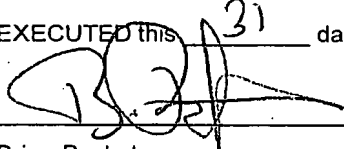
10. I further do not think that the Cleveland, Bostelman, and Litman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 9 above. The Litman patent discloses ribs 30, but describes these ribs 30 as being flexible to facilitate a snug fit and ease of withdrawal of the item stored in the holster 10. The ribs described in the Litman patent are not guides, and certainly do not disclose, teach, or suggest the a structure that would facilitate entry of the plug projection into the dispensing opening.

11. In summary, I don't see how one of ordinary skill in the art would take parts from various patent disclosures and put them together in a way that would come up with the Caulked N' Ready holder.

12. I do not see in any of the drawings of the patented items, anything similar to Caulked N' Ready. This product ingeniously incorporates storage with a working tool.

13. I, Brian Bochet, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 31 day of August, 2005.

  
\_\_\_\_\_  
Brian Bochet

system to facilitate entry and withdrawal of the plug projection into the dispensing opening.

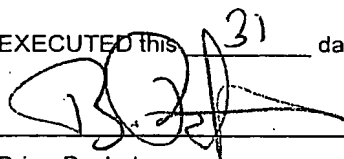
10. I further do not think that the Cleveland, Bostelman, and Litman patents, taken alone or in combination, disclose, teach, or suggest to one of ordinary skill in the art the Caulked N' Ready product as described in paragraph 9 above. The Litman patent discloses ribs 30, but describes these ribs 30 as being flexible to facilitate a snug fit and ease of withdrawal of the item stored in the holster 10. The ribs described in the Litman patent are not guides, and certainly do not disclose, teach, or suggest the a structure that would facilitate entry of the plug projection into the dispensing opening.

11. In summary, I don't see how one of ordinary skill in the art would take parts from various patent disclosures and put them together in a way that would come up with the Caulked N' Ready holder.

12. I do not see in any of the drawings of the patented items, anything similar to Caulked N' Ready. This product ingeniously incorporates storage with a working tool.

13. I, Brian Bochet, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

EXECUTED this 31 day of August, 2005.

  
\_\_\_\_\_  
Brian Bochet

X. Related Proceedings Appendix

NONE

## XI. Conclusion

The Appellant respectfully submits that pending claims 1-24 are in condition for allowance, and such allowance is respectfully requested. If there is any matter which could be expedited by consultation with the Appellant's attorney, such would be welcome. The Appellant's attorney can normally be reached at the telephone number below.

Signed at Bellingham, County of Whatcom, State of Washington this 2nd day of July, 2007.

Respectfully submitted,

Kelly Good

By Michael R. Schacht

Michael R. Schacht, Reg. No. 33,550  
2801 Meridian Street, Suite 202  
Bellingham, WA 98225-2400  
phone: (360) 647-0400  
fax: (360) 647-0412  
Customer No. 30662

### CERTIFICATE OF MAILING

37 C.F.R. §1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to Technology Center (TC), Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Signature: \_\_\_\_\_

Susie Hubka

Print Name: Susie Hubka

Date: July 2, 2007